

**NOTICE OF PENDENCY OF CLASS AND PAGA REPRESENTATIVE ACTION AND PROPOSED SETTLEMENT**

*Eliseo Ochoa v. Vieira Agricultural Enterprises, LLC*

**Merced County Superior Court**

**Case No.: 21CV-02299**

To: All current and former non-exempt employees of Vieira Agricultural Enterprises, LLC, who worked for Vieira Agricultural Enterprises, LLC in California between July 14, 2017, up to November 30, 2022 (“Class Members”).

**PLEASE READ CAREFULLY**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

***Why should you read this Notice?***

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in the matter of *Eliseo Ochoa v. Vieira Agricultural Enterprises, LLC*, Merced County Superior Court, Case No. 21CV-02299 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Defendant Vieira Agricultural Enterprises, LLC’s (“Vieira” or “Defendant”) records show that you were employed by Vieira as a non-exempt employee in California between July 14, 2017 and November 30, 2022 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound to the terms of the Settlement and any final judgment.

***What is this Lawsuit about?***

Plaintiff Eliseo Ochoa (“Plaintiff”) brought this Lawsuit against Vieira seeking to assert claims on behalf of a class of all current and former non-exempt employees who worked for Defendant in California during the Class Period. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Class Members, are known as “Class Counsel.”

The Lawsuit alleges that Defendant: (i) failed to pay employees all earned wages including minimum and overtime wages; (ii) failed to provide all legally required meal periods; (iii) failed to authorize all legally required rest periods; (iv) failed to provide accurate and itemized wage statements; (v) failed to timely pay all wages due or final wages due upon separation of employment; (vi) failed to reimburse for all necessary business expenses; and (vii) engaged in unlawful business practices as a result of the above-mentioned alleged violations. The Lawsuit further alleges that Defendant is also liable for civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”).

**Defendant denies that it has done anything wrong. Defendant also denies that it owes the Class any wages, restitution, statutory or civil penalties, damages, or any other remedies. Accordingly, the Settlement is a compromise of disputed claims and should not be considered an admission of liability on the part of Defendant, by whom all liability is expressly denied.**

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of the Court not allowing the case to proceed as a class action, the risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

The Court has not ruled on the merits of the claims alleged in the Lawsuit. In granting preliminary approval of the Settlement, the Court has determined only that there is sufficient evidence to suggest that the Settlement might be fair, adequate, and reasonable. A final determination on whether the Settlement is fair, adequate, and reasonable will be made at the Final Approval hearing.

**Your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant’s policies strictly prohibit unlawful retaliation.** Defendant will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of his or her decision to either participate or not participate in the Settlement.

## Who are the Attorneys?

Attorneys for Defendant Vieira Agricultural Enterprises, LLC

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## What are the terms of the Settlement?

Defendant Vieira agrees to pay \$1,500,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Class Members who do not opt-out of the Settlement (“Settlement Class Members”) as described below, employees entitled to a portion of the PAGA portion of the settlement (“Aggrieved Employees”), the State of California, Class Counsel’s attorneys’ fees and expenses, Settlement administration costs, and the Class Representative’s Enhancement Payment.

The following deductions from the Maximum Settlement Amount will be requested by the Parties:

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of Class Members and Aggrieved Employees on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Class Members and Aggrieved Employees are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for up to thirty-five percent the Maximum Settlement Amount, which is currently estimated at \$525,000.00, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$20,000.00 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$25,000.00 from the Maximum Settlement Amount to pay the settlement administration costs. Additionally, the Settlement Administrator will calculate Defendant Vieira’s share of the payroll taxes that will be paid in addition to the Maximum Settlement Amount.

Class Representative’s Enhancement Payment. Class Counsel will ask the Court to award the Class Representative an Enhancement Payment in the amount of \$7,500.00, to compensate him for his service and extra work provided on behalf of the Class Members and Aggrieved Employees.

Payment to State of California. The Parties have agreed to allocate \$20,000.00 towards the Settlement of the PAGA claims in the Lawsuit. \$15,000.00 will be paid to the State of California Labor and Workforce Development Agency (“LWDA”), representing its 75% share of the PAGA civil penalties (“LWDA Payment”). The remaining \$5,000.00 will be allocated to Aggrieved Employees who worked at least one shift during the period of July 14, 2020 up to November 30, 2022, (the “PAGA Period”) (the “PAGA Amount”).

Payment of PAGA Amount. Each Aggrieved Employee who was employed by Vieira at any time during the PAGA Period, shall receive a portion of the \$5,000.00 that has been designated as the PAGA Amount based on their proportionate share of PAGA Workweeks worked during the PAGA Period, by multiplying the PAGA Amount by a fraction, the numerator of which is the Aggrieved Employee’s PAGA Workweeks during the PAGA Period, and the denominator of which is the total PAGA Workweeks of all Aggrieved Employees during the PAGA Period. A “PAGA Workweek” is any workweek in which an Aggrieved Employee worked at least one shift for Vieira during the PAGA Period.

Calculation of Participating Member Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the “Net Settlement Amount,” which will be distributed to all Settlement Class Members. The Net Settlement Amount is estimated at approximately \$902,500, and will be divided as follows:

- (i) The Net Settlement Amount shall be distributed to each Settlement Class Member based on their proportionate share of Class Workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member’s Class Workweeks during the Class Period, and the denominator of which is the total Class Workweeks of all Settlement Class Members during the Class Period. A “Class

Workweek” is any workweek in which a Settlement Class Member worked at least one shift performing work for Vieira during the Class Period.

**Funding of Settlement.** The Maximum Settlement Amount will be funded in five installments which the settlement administrator shall place in a Qualified Interest-Bearing Settlement Account established by the Settlement Administrator for this purpose as follows: (i) Defendant shall make the first installment of \$300,000 within five (5) business days of the court’s entry of preliminary approval of class action/PAGA settlement (“Preliminary Approval”); (ii) Defendant shall make the second installment payment of \$300,000 within six (6) months after the first payment is deposited or within 30 days of final approval (“Final Approval”), whichever is later; (iii) Defendant shall make the remaining installment payments of \$300,000 each within six, twelve and eighteen months thereafter, respectively. Based on this installment schedule, it is anticipated that the Settlement will be fully funded within twenty-four months of Final Approval.

The Settlement Administrator shall disburse Plaintiff’s Class Representative Enhancement Payment, Class Counsel’s litigation costs and expenses, and twenty percent (20%) of Class Counsel’s attorneys’ fees within fifteen (15) days of Final Approval. The Settlement Administrator shall disburse an additional twenty-percent (20%) of Class Counsel’s attorneys’ fees within fifteen (15) days of receipt of the second installment payment. The Settlement Administrator shall disburse an additional twenty-percent (20%) of Class Counsel’s attorneys’ fees within fifteen (15) days of receipt of the third installment payment. The Settlement Administrator shall disburse an additional twenty-percent (20%) of Class Counsel’s attorneys’ fees within fifteen (15) days of receipt of the fourth installment payment. The Settlement Administrator shall disburse the remaining twenty-percent (20%) of Class Counsel’s attorneys’ fees within fifteen (15) days of receipt of the fifth and final installment payment. Disbursement of all other portions of the Maximum Settlement Amount, shall be made within fifteen (15) days of the final installment payment.

**Payment of the Settlement.** If the Court grants final approval of the Settlement, Participating Member Payments will be mailed to all Aggrieved Employees for their portion of the PAGA Amount regardless of whether they submit a Request for Exclusion Form. In addition, Settlement Class Members will receive additional compensation as part of their Participating Member Payments comprised of their portion of the Net Settlement Amount as described above.

1. **Allocation and Taxes.** For tax purposes, each Participating Class Member Payment shall be treated as follows: 20% as “wages” subject to normal payroll withholdings, for which an IRS Form W-2 will be issued; and 80% as penalties and interest with no withholdings, for which an IRS Form 1099 will be issued. For Aggrieved Employees 100% of the PAGA Amount shall be treated as penalties with no withholdings, for which an IRS Form 1099 will be issued. Participating Members are responsible for the proper income tax treatment of the Participating Member Payments. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Participating Members should consult with their tax advisors concerning the tax consequences and treatment of awards they receive under the Settlement. Participating Members will assume any tax obligations or consequences that may arise from any disbursements made under this Agreement and shall not seek any indemnification from the Parties or any of the Released Parties in this regard. In the event that any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.

**Released Parties.** Released Parties means: Vieira Agricultural Enterprises, LLC, and all of its past or present owners, officers, directors, shareholders, members, executives, partners, employees, insurers, managers, agents, representatives, predecessors, successors, including Manuel E. Vieira, Inc. and A.V. Thomas Produce, Inc., and each of their respective past or present owners, officers, directors, shareholders, members, executives, partners, employees, insurers, managers, agents, representatives, predecessors, successors.

**Class Release.** All Settlement Class Members will release Released Parties, from all claims, both potential and actual, that were or may have been raised based on the facts pled in operative first amended class and representative action complaint (“FAC”) that arose during the Class Period (“Released Class Claims”), including claims under Labor Code §§ 118.12, 201, 202, 203, 204, 205, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698, 2699.3; Wage Order 14, §§ 3, 4, 7, 11, 12 and Business & Professions Code § 17200 *et seq.*; Civil Code §§ 3287 and 3289 and Code of Civil Procedure § 1021.5 and all claims both potential and actual, that were or may have been raised based on the facts pled in the first amended class and representative action complaint (“FAC”) for minimum wage violations, overtime wage violations, meal period violations, rest period violations, failure to reimburse for necessary business expenses, wage statement violations, waiting time penalties and unfair competition.

**PAGA Release.** All Aggrieved Employees who worked during the PAGA Period will release Released Parties from all PAGA claims, both potential and actual, that were or may have been raised based on the facts pled in operative first amended class and representative action complaint (“FAC”) or asserted in the PAGA letter Ochoa submitted to the LWDA on July 14, 2021, in Case No. LWDA-CM-837903-21 (“Released PAGA Claims”), including claims under Labor Code §§ 118.12, 201, 202, 203, 204, 205, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698, 2699.3; Wage Order 14, §§ 3, 4, 7, 11, 12 and all claims both potential and actual, that were or may have been raised based on the facts pled in the FAC or PAGA letter for minimum wage violations, overtime wage violations, meal period violations, rest period violations, failure to reimburse for necessary business expenses, wage statement violations and waiting time penalties.

**Conditions of Settlement.** The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of a Judgment.

### ***How can I claim money from the Settlement?***

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of Class Workweeks worked during the Class Period, and the proportionate number of PAGA Workweeks you worked during the PAGA Period, as stated in this Notice. You also will be bound by the Settlement, including the release of claims stated above.

### ***What other options do I have?***

Dispute Information In This Notice. Your Participating Member Payment is based on the proportionate number of Class Workweeks you worked during the Class Period, and the proportionate number of PAGA Workweeks you worked during the PAGA Period. The information contained in Defendant's records regarding each of these factors, along with your estimated Participating Member Payment, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Any disputes, along with supporting documentation, must be postmarked no later than July 18, 2023. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make a determination as to whether an adjustment will be made.

According to Defendant's records:

- (a) you worked \_\_\_\_ Class Workweeks during the Class Period; and
- (b) you worked \_\_\_\_ PAGA Workweeks during the PAGA Period.

Based on the above, your Participating Member Payment is estimated at \$\_\_\_\_\_.

Exclude Yourself from the Class Portion of the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself from the class portion of the settlement by completing the Request for Exclusion Form included with this Notice, and sending it to the Settlement Administrator postmarked no later than July 18, 2023, with your name, address, telephone number, and your signature.

Send the Request for Exclusion Form directly to the Settlement Administrator by mail at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Any person who submits a timely Request for Exclusion Form, shall, upon receipt by the Settlement Administrator, not be a Settlement Class Member and will not receive any portion of the class settlement. However, the person may not opt out of the PAGA portion of the settlement and release as described above. Settlement Class Members who also qualify as Aggrieved Employees will receive their portion of the PAGA Amount regardless of their decision to opt out of the class settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may timely submit a written objection directly to the Settlement Administrator by mail or fax at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. Your written objection must: (1) contain the objecting Class Member's full name and current address; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) objections must be postmarked on or before July 18, 2023.

You may also object by appearing at the Final Approval Hearing scheduled for September 15, 2023 at 8:15 a.m. in Department 8 of the Merced County Superior Court, located at 627 W. 21 St., Merced, California 95340. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. All objections or other correspondence must state the name and number of the case, which is *Eliseo Ochoa v. Vieira Agricultural Enterprises, LLC.*, Merced County Superior Court, Case No. 21CV-02299.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

### ***What is the next step?***

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on September 15, 2023 at 8:15 a.m., in Department 8 of the Merced County Superior Court, located at 627 W. 21 St, Merced, California 95340. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, Settlement Administrator costs, and the Class Representatives' Enhancement Payment. **You are not required to attend the Final Approval Hearing, although any Class Member or Aggrieved Employee is welcome to attend the hearing.**

### ***How can I get additional information?***

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Merced County Superior Court, located at 1415 Truxton Avenue, California 93301, during regular court hours. You may also view the case file online at <https://jportal.mercedcourt.org/MERCEDPUBLIC/Home/Dashboard/29> and entering the case number information. The Settlement Agreement is attached as Exhibit A to the Declaration of Daniel J. Brown In Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed on April 14, 2023. You may also contact the Settlement Administrator at (800) 523-5773 for more information. The Settlement Administrator also established a webpage at: <https://www.phoenixclassaction.com/OchoaVieiraAg>, which

includes links to the Settlement Agreement, FAC, Preliminary Approval Order, and for which any Judgment in this Lawsuit will be posted.

**PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

**IF YOU MOVE ADDRESSES PRIOR TO RECEIVING PAYMENT UNDER THE TERMS OF THIS SETTLEMENT PLEASE PROVIDE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS TO ENSURE YOU RECEIVE YOUR PARTICIPATING MEMBER PAYMENT**

***REMINDER AS TO TIME LIMITS***

The deadline for submitting a Request for Exclusion Form, a written objection, or any dispute is July 18, 2023. These deadlines will be strictly enforced.

**BY ORDER OF THE COURT ENTERED ON APRIL 14, 2023.**